



State of Wisconsin  
Governor Scott Walker

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**Department of Agriculture, Trade and Consumer Protection**

Ben Brancel, Secretary

**DATE:** July 2, 2013

**TO:** Board of Agriculture, Trade and Consumer Protection

**FROM:** Ben Brancel, Secretary  
Sandy Chalmers, Administrator, Trade and Consumer Protection Division

**SUBJECT:** Home Improvement Practices (Hearing Draft)

**PRESENTED BY:** Michelle Reinen

**REQUESTED ACTION:**

At the July 16, 2013 Board meeting, the Department of Agriculture, Trade and Consumer Protection (DATCP) will ask the DATCP Board to authorize public hearings on a proposed rule (copy attached) related to home improvement practices. This rule makes some updates and revisions to existing DATCP rules.

**SUMMARY:**

*Rule Content*

ATCP 110 currently regulates home improvement practices. Pursuant to the definition of "home improvement", new residential construction is outside of the scope of the current rule and DATCP does not regulate trade practices in the construction of new homes.

Under this rule, the rights and duties contained in ATCP 110 would not apply to very large home improvement projects; those where the value of the project is more than 100% of the assessed value of the property. A typical example of this might be a contract to build a new structure on a preexisting foundation.

Under the current rule, home improvement contractors are required to obtain all required state or local building permits before work can begin under the contract. Under this proposed rule, if a home improvement contract consists of multiple subprojects, contractors may start work on the overall project before obtaining all building permits. However, they may not begin work on a subproject that requires a building permit until after they obtain the permit.

Under the current rule, sellers must provide manufacturers product warranties either at the time the buyer and seller enter into the contract or when the product is installed. Under this proposed rule, the seller has the option of providing written manufacturers' warranties at the completion of the project – as long as specified in the contract.

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Under the current rule, if a home improvement contract contains liquidated damages that penalize a buyer for breaching the contract; the liquidated damages may not exceed 10% of the contract price or \$100, whichever is less. This proposed rule maintains the 10% limit, but it repeals the \$100 maximum.

Under the current rule, the seller may not substitute products or materials from those specified in the home improvement contract, or for those which the seller represented would be used, without prior consent from the buyer. If the home improvement contract is in writing, the prior consent must also be in writing. Under this proposed rule, the seller may deviate from the written home improvement contract; but only under certain, limited conditions:

- The buyer verbally agrees to the deviation
- The seller maintains documentation of the deviation, and that the buyer agreed to the deviation.
- The deviation does not represent any additional cost to the buyer
- The deviation does not represent a decrease in the value of the finished product.

Under the current rule, the seller is required to provide the buyer with lien waivers before accepting final payment. Further, if the contract requires partial payments at various stages in the performance of the contract; the seller is required to provide lien waivers for the proportionate value of all labor, services and products or materials furnished or delivered as of the time payment is made. This rule does not alter the current rule's treatment of lien waivers before final payment. However, it does allow the seller to forego proportionate lien waivers before partial payments as long as the seller take steps to educate the buyer about lien waivers and the buyer provides written consent to foregoing the partial waivers.

Under the current rule, sellers are required to give buyers timely notice of any impending delay in contract performance. If the home improvement contract is in writing (or required to be in writing), the buyer must agree in writing to the change in the schedule. This rule qualifies this requirement by specifying that, if the seller can show that the delay was caused by the buyer, the seller is not responsible for the delay.

The current rule contains protections for buyers in the event that the seller fails to complete the project, but also assigns the rights to collect payment to a third party. This rule does not alter this provision; but it does insert an explanatory note that includes an example of how it might be applied.

Under current rules, sellers who provide basement waterproofing services are regulated both as home improvement contractors under Ch. ATCP 110 and also under Ch. ATCP 111 – Basement Waterproofing Practices. This rule consolidates the content of Ch. ATCP 111 into a section of ATCP 110, without making any substantial changes.

### ***Summary of, and Comparison with, Existing or Proposed Federal Statutes and Regulations.***

The federal government does not, in general, regulate home improvement practices.

### ***Comparison with Rules in Adjacent States***

Most states, including all of Wisconsin's neighbors have home improvement practices laws. Many of the provisions in ATCP 110 are common in these other states as well.

Illinois regulates home improvement practices through its Home Repair and Remodeling Act and its Home Repair Fraud Act. These provisions are generally similar to Wisconsin's Home Improvement Practices rule.

Iowa grants consumers a private right of action, which enables consumers to sue businesses that engage in deceptive or unfair practices, misrepresentation, or failure to disclose material facts. This law covers home improvement practices, among other areas.

Contractor who do home improvement work in Minnesota and Michigan are required to obtain a license from the state (there are some exceptions). In Minnesota, licensed contractors are required to pay into the Minnesota Contractor's Recovery Fund. This fund compensates people who have suffered losses due to a licensed contractor's fraudulent, deceptive or dishonest practices, misuse of funds, or failure to do the work the contractor was hired to do.

### *Summary of Factual Data and Analytical Methodologies*

We do not have statistics specific to Wisconsin, but fixr.com (a web-based contractor referral service) has reported the extent of the home improvement industry on a national basis.

#### **United States Annual Averages 1995 - 2009**

	Number of Projects	Total Expenditure	Average Cost Per Project
Room additions and alterations	1,156,018	\$ 23,141,745,151	\$ 20,019
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Exterior additions and replacements	5,636,949	\$ 23,734,265,908	\$ 4,210
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<http://www.fixr.com/infographics/us-home-improvement-industry-at-a-glance.html>

Complaints against home improvement contractors are consistently ranked in the top ten complaint categories received by The Bureau of Consumer Protection. In 2012, DATCP received 391 written complaints against home improvement contractors.

### *Effect on Small Business*

The existing ATCP 110 regulates businesses that provide home improvement services. Many of these businesses are "small businesses". They include general contractors, landscapers, plumbers, roofers, window installers, cabinet makers, electricians, and many more. Some of changes to ATCP 110 proposed in this rule will have an effect on some of these businesses. However, DATCP anticipates that the majority of those effects will be beneficial. The rule streamlines existing regulations to make them easier for home improvement providers to comply. But the rule does not eliminate these regulations, thereby preserving important protections for consumers. This rule may benefit home improvement contractors in the following ways:

- General contractors working on significant reconstruction projects would no longer be regulated under this proposed rule. Currently, Ch. ATCP 110 does not regulate new home construction but it does regulate home improvement projects. Under this proposal, major reconstructions – those projects where the price of the contract is greater than the assessed property value -- would be treated like new home construction.
- For all home improvement contractors, this rule provides some additional flexibility (as long as certain conditions are met). Including:
  - Building permits need only be obtained before work on that portion of the project concerning the building permit. Otherwise, all required building permits must be obtained before any work is completed.
  - Sellers can provide written manufacturers' warranties at the conclusion of the work. Otherwise, written manufacturers' warranties must be provided at the time the product is installed.
  - Under very limited circumstances, sellers can deviate from the written contract based on verbal agreements between the buyer and the seller.
  - The seller cannot be held responsible for delays in contract performance if the seller can demonstrate that delay was caused by actions or inactions of the buyer.

### *Environmental Impact*

This rule does not have an environmental impact.

### *Next Steps*

If the Board authorizes public hearings on this rule, DATCP will refer a copy of the rule to the Legislative Council Rules Clearinghouse and publish a hearing notice in the Wisconsin Administrative Register. DATCP will hold public hearings on the dates and at the locations specified in the hearing notice. The hearing dates and locations have not yet been determined.

Following the public hearings, DATCP will prepare a final draft rule for the Board's consideration. If the Board approves a final draft rule, DATCP will transmit that final draft rule to the Legislature for review by appropriate legislative committees. If the Legislature takes no action to stop the rule, the Secretary will sign the final rulemaking order and transmit it for publication.

**PROPOSED ORDER  
OF THE WISCONSIN DEPARTMENT OF AGRICULTURE,  
TRADE AND CONSUMER PROTECTION  
ADOPTING RULES**

1 The Wisconsin department of agriculture, trade and consumer protection proposes the following  
2 rule *to repeal* ATCP 110.02 (6) (L) and (m), Ch. ATCP 111 Title and preamble notes, ATCP  
3 111.01 (5), and 111.06; *to renumber* ATCP 111.01, 111.02 (intro) (1) to (4), (6), and (7), 111.03  
4 (2) to (6), and (8) to (10), 111.04, and 111.05; *to renumber and amend* ATCP 110.02 (3) (d) and  
5 (7) (c), ATCP 111.03 (intro) (1) and (7); *to amend* ATCP 110.01 (2), 110.02 (6) (n), 110.025,  
6 110.03 (1), 110.04 (1) and 110.05 (7); *to create*, 110.01 (2m) 110.03 (3) and (4), 110.06 (1)  
7 Note, and 110.09 (title); *relating to* Home improvement practices and basement waterproofing  
8 practices, and affecting small businesses.

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**Analysis Prepared by the Department  
of Agriculture, Trade and Consumer Protection**

This rule revises and updates current rule relating to home improvement practices.

***Statutes Interpreted***

Statutes Interpreted: s. 100.20, Stats.

***Statutory Authority***

Statutory Authority: ss. 93.07(1) and 100.20 (2), Stats.

***Explanation of Statutory Authority***

DATCP has broad general authority, under s. 93.07(1), Stats., to interpret laws under its jurisdiction.

DATCP has authority under s. 100.20 (2) (a) to promulgate rules forbidding methods of competition in business or trade practices in business that are determined to be unfair. DATCP also has authority to promulgate rules prescribing methods of competition or trade practices that that DATCP determines to be fair.

### ***Related Statutes and Rules***

Some of the home improvement contractors regulated by ATCP 110 may also be regulated by Ch. 101 – Subchapter II, One and Two Family Dwelling Code, Wis. Stats., associated Department of Safety and Professional Services (DSPS) administrative rules, and building codes administered by local units of government.

Under statutes and rules administered by DSPS, persons who apply for building permits for one or two unit dwellings (and who are not an owner and resident), are required to have a Dwelling Unit Contractor Certification from DSPS. These statutes and rules do not distinguish between building permits for new construction and building permits for home repairs or improvement. Therefore, certified dwelling unit contractors who specialize in new home construction are not regulated by ATCP 110. And home improvement contractors who perform jobs that do not require building permits are not regulated by the dwelling unit contractor certification program.

### ***Plain Language Analysis***

#### **Rule Content**

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## *Analysis and Supporting Documents Used to Determine Effect on Small Business or in Preparation of an Economic Impact Analysis*

DATCP has consulted with the Wisconsin Builders Association and the National Association of Remodelers – Milwaukee Chapter on the economic impact and the small business impact of this rule.

### *Effect on Small Business*

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  - The seller cannot be held responsible for delays in contract performance if the seller can demonstrate that delay was caused by actions or inactions of the buyer.

### *Environmental Impact*

This rule does not have an environmental impact.

### *DATCP Contact*

Kevin LeRoy  
Department of Agriculture, Trade and Consumer Protection  
P.O. Box 8911  
Madison, WI 53708-8911  
Telephone (608) 224-4928  
E-Mail: [kevin.leroy@wisconsin.gov](mailto:kevin.leroy@wisconsin.gov)

### *Place Where Comments can be Submitted and Deadline for Submission*

Questions and comments related to this rule may be directed to:

Kevin LeRoy  
Department of Agriculture, Trade and Consumer Protection  
P.O. Box 8911  
Madison, WI 53708-8911  
Telephone (608) 224-4928  
E-Mail: [kevin.leroy@wisconsin.gov](mailto:kevin.leroy@wisconsin.gov)

Rule comments will be accepted up to two weeks after the last public hearing is held on this rule. Hearing dates will be scheduled after this rule is approved by the Board of Agriculture, Trade and Consumer Protection.

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SECTION 1. ATCP 110.01 (2) is amended to read:

(2) "Home Improvement" means the remodeling, altering, repairing, painting, or modernizing of residential or non-commercial property, or the making of additions thereto, and includes, but is not limited to, the construction, installation, replacement, improvement or repair of driveways, sidewalks, swimming pools, terraces, patios, landscaping, fences, porches, garages, basements and basement waterproofing, fire protection devices, heating and air conditioning equipment, water softeners, heaters and purifiers, wall-to-wall carpeting or attached or inlaid floor coverings, and other changes, repairs or improvements made in or on, attached to or forming a part of the residential or non-commercial property, ~~but does not include the construction of a new residence.~~ The term extends to the conversion of existing commercial

1 structures into residential or non-commercial property. “Home improvement” does not include  
2 the construction of a new residence or the major renovation of an existing structure.

3 SECTION 2. ATCP 110.01 (2m) is created to read:

4 ATCP 110.01 (2m) “Major renovation” means a renovation or reconstruction contract  
5 where the total cost of the contract is equal to or greater than the assessed value of the property at  
6 the time the contract is initiated. In this subsection, “assessed value of the property” means the  
7 value of the land and any attached buildings or structures assigned by a local unit of government  
8 for property tax purposes.

9 SECTION 3. ATCP 110.02 (3) (d) is renumbered to ATCP 110.023 and amended to read:

10 ATCP 110.023. Substituting products or materials; deviating from written contract.

11 (1) No seller shall ~~Substitute~~ substitute products or materials for those specified in the home  
12 improvement contract, or for those which the seller represented would be used in the home  
13 improvement, without the prior consent of the buyer. If Except as provided in sub. (2), if a  
14 written home improvement contract is required under s. ATCP 110.05 (1) or the buyer signs a  
15 written contract, the buyer’s consent under this paragraph shall also be in writing.

16 (2) The seller may continue with home improvement work that deviates from the  
17 requirement in sub (1) if all the following conditions are met:

18 (a) The buyer authorizes the deviation, either verbally or in writing, before the seller  
19 proceeds.

20 (b) The seller must maintain documentation of:

21 1. The manner in which the buyer communicated the authorization for the deviation. In  
22 this subd., “manner” means an e-mail, face-to-face discussion, phone call, or some other method  
23 of communicating.

1        2. The name of the buyer who authorized the deviation.

2        3. The date and time that the buyer authorized the deviation.

3        4. A description of the deviation.

4        (c) The deviation does not represent any additional cost to the buyer.

5        (d) The deviation does not represent a decrease in the value of the materials used or the  
6 services provided.

7        (e) If a written home improvement contract is required under s. ATCP 110.05 (1) or the  
8 buyer signs a written contract, the seller must report any deviations documented pursuant to  
9 subd. (b), to the buyer before final payment is accepted.

10        SECTION 4. ATCP 110.02 (6) (L) and (m) are repealed.

11        SECTION 5. ATCP 110.02 (6) (n) is amended to read:

12        (n) Fail to disclose to a buyer, before the buyer enters into a home improvement contract,  
13 that the buyer is entitled to receive written lien waivers according to ~~pars. (L) and (m)~~ s. ATCP  
14 110.025.

15        SECTION 6. ATCP 110.02 (7) (c) is renumbered to ATCP 110.027 and amended to read:

16        ATCP 110.027 **Delay in contract performance (1)** ~~Fail to~~ A seller must give the buyer  
17 timely notice of any impending delay in the home improvement contract performance, if  
18 performance will be delayed beyond a deadline specified in the home improvement contract.  
19 The notice shall specify the reason or reasons for the delay, and shall specify new proposed  
20 deadlines by which the seller will begin and complete the work. If a written home improvement  
21 contract is required under s. ATCP 110.05 (1) or the buyer signs a written contract, no change in  
22 performance deadlines is effective unless the buyer agrees in writing to the change.

1        (2) Notwithstanding sub. (1) a seller shall not be responsible for delays in contract  
2        performance if the seller can demonstrate that the delay was caused by actions or inactions of the  
3        buyer.

4        **SECTION 7. ATCP 110.025 is created to read**

5        **ATCP 110.025 Lien Waivers.** (1) A Seller must provide to the buyer lien waivers in  
6        writing from all contractors, subcontractors, and material suppliers at or prior to the time final  
7        payment is made on the home improvement contract.

8        (2) If partial payments are required at various stages in the performance of the contract, a  
9        seller must comply with either par. (a) or par. (b).

10       (a) Provide the buyer lien waivers in writing from all contractors, subcontractors and  
11       material suppliers for the proportionate value of all labor, services and products or materials  
12       furnished or delivered as of the time partial payment is made.

13       (b) Obtain consent from the buyer that the seller is not required to provide the lien  
14       waivers. The consent shall be in the form of the following written statement and release, clearly  
15       and conspicuously inserted in the contract or a separate writing, and separately signed by the  
16       buyer:

17                                ***Buyer's release of partial lien waivers requirement***

18        *I understand that contractors, subcontractors, and materials suppliers may have a right*  
19        *to file a lien against my property if they are not paid for their products or services. I further*  
20        *understand that lien waivers prevent the filing of such liens. Wisconsin law (ATCP 110, Wis.*  
21        *Adm. Code) requires sellers of home improvement services to provide the buyer with lien*  
22        *wavers from all contractors, subcontractors and material suppliers before accepting final*  
23        *payment from the buyer. In addition, if the home improvement contract requires partial*  
24        *payments at various stages in the performance of the contract, the seller is required to provide*  
25        *lien waivers for the proportionate value of labor, service and products or materials furnished or*  
26        *delivered as of the time the partial payment is made -- unless the buyer specifically waives this*  
27        *requirement by signing in the space below. If I do not sign the release, the seller is required to*  
28        *provide partial lien waivers before each partial payment.*

29        *I agree to release the seller from the requirement of providing lien waivers before*  
30        *accepting partial payments. [Sign or initial] \_\_\_\_\_*

1           **SECTION 8.** ATCP 110.03 (1) is amended to read:

2           ATCP 110.03 (1) Before a buyer enters into a home improvement contract, the seller  
3 shall inform the buyer of all building or construction permits that are required for the home  
4 improvement. ~~No~~ Except as provided in sub. (4), no seller may start work under a home  
5 improvement contract until all required state and local permits have been issued.

6           **SECTION 9.** ATCP 110.03 (3) and (4) are created to read:

7           ATCP 110.03 (3) Pursuant to sub. (2), if the state or local inspector who completed the  
8 inspection does not issue an inspection document; the seller may provide a summary of the  
9 inspection to the buyer, including the inspector's name, the date of the inspection, and inspection  
10 number or some other way to identify the inspection in the state or local building inspection  
11 database.

12           ATCP 110.03 (4) Notwithstanding sub. (1), if the home improvement contract includes  
13 subprojects, no seller may start work on any subproject of a home improvement contract that  
14 requires state or local permits until all permits required for that subproject have been issued.

15           **SECTION 10.** ATCP 110.04 (1) is amended:

16           ATCP 110.04 (1) A seller shall give a buyer a copy of every written warranty made with  
17 respect to labor, services, products or materials furnished in connection with a home  
18 improvement. If a seller makes any oral warranty, the seller shall document that warranty in  
19 writing and give a copy to the buyer. The seller shall provide all warranty documents to the  
20 buyer at the time the buyer enters into a home improvement contract, except that a  
21 manufacturer's product warranty may be provided ~~when that product is installed.~~ at any of the  
22 following times:

23           (a) At the time the buyer enters into a home improvement contract.

1       **(b) At the time the product is installed.**

2       **(c) At the conclusion of the project, if specified in the contract.**

3       **SECTION 11.** ATCP 110.05 (7) is amended:

4       ATCP 110.05 (7) Liquidated damages for breach of contract by the buyer if made a part  
5 of the contract shall not exceed 10% of the contract price ~~and in no event more than \$100.~~

6       **SECTION 12.** ATCP 110.06 (1) **Note** is created to read:

7       *ATCP 110.06 (1) Note For example: A buyer and seller agree that the buyer will pay for home*  
8 *improvement work at a later date, and the seller subsequently assigns the debt to a finance company.*  
9 *Then the seller fails to complete the home improvement contract. Under this subsection, the finance*  
10 *company is subject to the buyer's claims and defenses under the contract – even though it was not the*  
11 *finance company that failed to complete the work.*

12       **SECTION 13.** ATCP 110.09 (title) is created to read:

13       **ATCP 110.09 Basement waterproofing practices.**

14       **SECTION 14.** ATCP 111 Title and preamble notes are repealed.

15       **SECTION 15.** ATCP 111.01 is renumbered to ATCP 110.09 (1).

16       **SECTION 16.** ATCP 111.02 (intro) and (1) to (4) are renumbered to ATCP 110.09 (2) (a)  
17 to (d).

18       **SECTION 17.** ATCP 111.02 (5) is repealed.

19       **SECTION 18.** ATCP 111.02 (6) and (7) are renumbered to ATCP 110.09 (2) (e) and (f).

20       **SECTION 19.** ATCP 111.03 (intro) and (1) are renumbered to ATCP 110.09 (3) (intro)  
21 and (a) and amended to read:

22       ATCP 110.09 (3) **PROHIBITED PRACTICES.** No seller of basement waterproofing services,  
23 products or materials shall engage in the following unfair trade practices or unfair methods of  
24 competition:

1 (a) Make or offer to make any guarantee with respect to basement waterproofing services  
2 unless the guarantee meets the requirements of s. ~~ATCP 111.04~~ ATCP 110.09 (4), and is  
3 furnished to the buyer in writing with a seller's analysis prior to final execution of any contract.

4 **SECTION 20.** ATCP 111.03 (2) to (6) are renumbered to ATCP 110.09 (3) (b) to (f).

5 **SECTION 21.** ATCP 111.03 (7) is renumbered to ATCP 110.09 (3) (g) and amended to  
6 read:

7 ATCP 110.09 (3) (g) Sell basement waterproofing services using the pressure pumping  
8 method unless the need or effectiveness of such method is established in a seller's analysis  
9 verified by an engineer's analysis furnished to the buyer prior to the sale, and the work is  
10 guaranteed as provided under ~~ATCP 111.04~~ ATCP 110.09 (4).

11 **SECTION 22.** ATCP 111.03 (8) to (10) are renumbered to ATCP 110.09 (3) (h) to (j).

12 **SECTION 23.** ATCP 111.04 (intro) and (1) to (3) are renumbered to ATCP 110.09 (4)  
13 (intro) and (a) to (c).

14 **SECTION 24.** ATCP 111.05 is renumbered to ATCP 110.09 (5).

15 **SECTION 25.** ATCP 111.06 is repealed.

16 **SECTION 26. EFFECTIVE DATE:** This rule takes effect on the third day of the month  
17 following publication in the Wisconsin administrative register, as provided in  
18 s. 227.22(2)(intro.), Stats.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

WISCONSIN DEPARTMENT OF AGRICULTURE,  
TRADE AND CONSUMER PROTECTION

By: \_\_\_\_\_  
Ben Brancel  
Secretary



**Wisconsin Department of Agriculture, Trade and Consumer Protection**

**Initial Regulatory Flexibility Analysis**

***Rule Subject:*** Home Improvement Practices  
***Adm. Code Reference:*** ATCP 110 and ATPC 111  
***Rules Clearinghouse #:*** Not yet assigned  
***DATCP Docket #:*** 12-R-08

***Rule Summary***

ATCP 110 currently regulates home improvement practices. Pursuant to the definition of "home improvement", new residential construction is outside of the scope of the current rule and DATCP does not regulate trade practices in the construction of new homes.

Under this rule, the rights and duties contained in ATCP 110 would not apply to very large home improvement projects; those where the value of the project is more than 100% of the assessed value of the property. A typical example of this might be a contract to build a new structure on a preexisting foundation.

Under the current rule, home improvement contractors are required to obtain all required state or local building permits before work can begin under the contract. Under this proposed rule, if a home improvement contract consists of multiple subprojects, contractors may start work on the overall project before obtaining all building permits. However, they may not begin work on a subproject that requires a building permit until after they obtain the permit.

Under the current rule, sellers must provide manufacturers product warranties either at the time the buyer and seller enter into the contract or when the product is installed. Under this proposed rule, the seller has the option of providing written manufacturers' warranties at the completion of the project -- as long as specified in the contract.

Under the current rule, if a home improvement contract contains liquidated damages that penalize a buyer for breaching the contract; the liquidated damages may not exceed 10% of the contract price or \$100, whichever is less. This proposed rule maintains the 10% limit, but it repeals the \$100 maximum.

Under the current rule, the seller may not substitute products or materials from those specified in the home improvement contract, or for those which the seller represented would be used, without prior consent from the buyer. If the home improvement contract is in writing, the prior consent must also be in writing. Under this proposed rule, the seller may deviate from the written home improvement contract; but only under certain, limited conditions:

- The buyer verbally agrees to the deviation
- The seller maintains documentation of the deviation, and that the buyer agreed to the deviation.
- The deviation does not represent any additional cost to the buyer
- The deviation does not represent a decrease in the value of the finished product.

Under the current rule, the seller is required to provide the buyer with lien waivers before accepting final payment. Further, if the contract requires partial payments at various stages in the performance of the contract; the seller is required to provide lien waivers for the proportionate value of all labor, services and products or materials furnished or delivered as of the time payment is made. This rule does not alter the current rule's treatment of lien waivers before final payment. However, it does allow the seller to forego proportionate lien waivers before partial payments as long as the seller take steps to educate the buyer about lien waivers and the buyer provides written consent to foregoing the partial waivers.

Under the current rule, sellers are required to give buyers timely notice of any impending delay in contract performance. If the home improvement contract is in writing (or required to be in writing), the buyer must agree in writing to the change in the schedule. This rule qualifies this requirement by specifying that, if the seller can show that the delay was caused by the buyer, the seller is not responsible for the delay.

The current rule contains protections for buyers in the event that the seller fails to complete the project, but also assigns the rights to collect payment to a third party. This rule does not alter this provision; but it does insert an explanatory note that includes an example of how it might be applied.

Under current rules, sellers who provide basement waterproofing services are regulated both as home improvement contractors under Ch. ATCP 110 and also under Ch. ATCP 111 – Basement Waterproofing Practices. This rule consolidates the content of Ch. ATCP 111 into a section of ATCP 110, without making any substantial changes.

### *Small Business Affected*

The existing ATCP 110 regulates businesses that provide home improvement services. Many of these businesses are “small businesses”. They include general contractors, landscapers, plumbers, roofers, window installers, cabinet makers, electricians, and many more. Some of changes to ATCP 110 proposed in this rule will have an effect on some of these businesses. However, DATCP anticipates that the majority of those effects will be beneficial. The rule streamlines existing regulations to make them easier for home improvement providers to comply. But the rule does not eliminate these regulations, thereby preserving important protections for consumers. This rule may benefit home improvement contractors in the following ways:

- General contractors working on significant reconstruction projects would no longer be regulated under this proposed rule. Currently, Ch. ATCP 110 does not

regulate new home construction but it does regulate home improvement projects. Under this proposal, major reconstructions – those projects where the price of the contract is greater than the assessed property value -- would be treated like new home construction.

- For all home improvement contractors, this rule provides some additional flexibility (as long as certain conditions are met). Including:
  - Building permits need only be obtained before work on that portion of the project concerning the building permit. Otherwise, all required building permits must be obtained before any work is completed.
  - Sellers can provide written manufacturers' warranties at the conclusion of the work. Otherwise, written manufacturers' warranties must be provided at the time the product is installed.
  - Under very limited circumstances, sellers can deviate from the written contract based on verbal agreements between the buyer and the seller.
  - The seller cannot be held responsible for delays in contract performance if the seller can demonstrate that delay was caused by actions or inactions of the buyer.

#### ***Reporting, Bookkeeping and other Procedures***

Generally, reporting, bookkeeping and other procedures are the same as the current rule. However, this proposed rule does allow home improvement contractors some choices. For example under the current rule, any changes to the home improvement contract must be in writing before any work can proceed under the contract. Under the proposed rule, work can proceed, but only if the seller agrees to maintain certain documentation.

#### ***Professional Skills Required***

This rule does not represent any requirements for professional skills.

#### ***Accommodation for Small Business***

Many of the businesses affected by this rule are "small businesses." This rule does not make special exceptions for small businesses because the subject matter does not lend itself to treating different sized home improvement contractors differently.

#### ***Conclusion***

This rule will generally benefit affected businesses, including "small businesses." Negative effects, if any, will be few and limited. This rule will not have a significant adverse effect on "small business," and is not subject to the delayed "small business" effective date provided in s. 227.22(2)(e), Stats.

Dated this 25 day of June, 20 13.

STATE OF WISCONSIN  
DEPARTMENT OF AGRICULTURE,  
TRADE AND CONSUMER PROTECTION

By 

Sandy Chalmers, Administrator  
Division of Agricultural Resource Management

# ADMINISTRATIVE RULES FISCAL ESTIMATE AND ECONOMIC IMPACT ANALYSIS

## Type of Estimate and Analysis

☒ Original    ☐ Updated    ☐ Corrected

## Administrative Rule Chapter, Title and Number

Ch. ATCP 110 and 111, Home Improvement Practices and Basement Waterproofing

## Subject

Home improvement practices and basement waterproofing

## Fund Sources Affected

☒ GPR    ☐ FED    ☒ PRO    ☐ PRS    ☐ SEG    ☐ SEG-S

## Chapter 20, Stats. Appropriations Affected

20.115 (1) (a) and (j)(b)

## Fiscal Effect of Implementing the Rule

☒ No Fiscal Effect  
☐ Indeterminate

☐ Increase Existing Revenues  
☐ Decrease Existing Revenues

☐ Increase Costs  
☐ Could Absorb Within Agency's Budget  
☐ Decrease Costs

## The Rule Will Impact the Following (Check All That Apply)

☐ State's Economy

☐ Local Government Units

☒ Specific Businesses/Sectors

☐ Public Utility Rate Payers

Would Implementation and Compliance Costs Be Greater Than \$20 million?

☐ Yes    ☒ No

## Policy Problem Addressed by the Rule

ATCP 110, Home Improvement Practices, helps ensure fair transactions between home improvement contractors and their customers. This rule regulates many different types of home improvement, remodeling, and repair projects. This rule has been in existence since 1940 and has been modified a number of times, most recently in 2001.

The changes proposed in this rule, generally, represent updates and revisions to keep the rule consistent with current industry practices. It does not represent a major shift in policy from the existing rules.

## Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

### Local Governments

This rule will not impact local governments.

### Home Improvement Contractors – General

This proposed rule is updated to reflect current practices in the home improvement industry. The rule will reduce the cost of compliance on home improvement contractors by reducing required paperwork, streamlining processes, and eliminating unnecessary, burdensome requirements. In general, the rule benefits both contractors and consumers by providing additional flexibility, while retaining prohibitions against unfair business practices. Contractors that take advantage of the proposed rule's added flexibility may incur minimal cost as they revise their standard contracts to conform to the new rule.

## **Home Improvement Contractors that Specialize in Major Reconstruction or Rebuilding of Existing Structures**

The current rule (generally) regulates any home improvement work that is done on an existing residential building (see ATCP 110.01 (2), the definition of "home improvement," for a more precise description). The current rule does not, however, regulate new home construction. Under this proposed rule, very large projects, those where the value of the project is greater than the assessed value of the property, would be outside the scope of the rule. This allows contractors who do this type of work to interact with their customers as they would when building a new home.

## **Basement Waterproofers**

Ch. ATCP 111 regulates business practices by basement waterproofers. This proposed rule streamlines the code by moving these provisions into a section of ATCP 110. However, it does not make any substantive changes to the requirements.

## **Utility Rate Payers**

This rule does not impact utility rate payers.

## **General Public**

Chs. ATCP 110 and 111 impact buyers of home improvement services by placing certain requirements and restrictions on home improvement contractors. This proposed rule does not represent a measurable change from this impact.

### **Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule**

#### *Benefits*

#### **Home improvement contractors**

The proposed rule is intended to reduce the cost of compliance to contractors, which will in turn lead to increased efficiency and profitability. The rule also retains important prohibitions against unfair trade practices that harm honest businesses and consumers. This rule should benefit home improvement contractors.

#### **General Public**

The rule provides additional flexibility in transactions between contractors and consumers. Consumers may benefit when contractors' gains in efficiency and flexibility translate into lower costs and increased competition.

#### *Alternatives*

DATCP could continue regulating the home improvement industry under existing rules. However, this proposed rule updates and refines existing ATCP 110, Home Improvement Practices. The intent of this rulemaking is to modernize and streamline the requirements, but without sacrificing important consumer protections.

### **Long Range Implications of Implementing the Rule**

Implementing the rule will benefit business, consumers, and the general public. The rule modifications will provide flexibility for businesses while retaining protection for consumers.

### **Compare With Approaches Being Used by Federal Government**

The federal government does not, in general, regulate home improvement practices.

Most states, including all of Wisconsin's neighbors have home improvement practices laws. Many of the provisions in ATCP 110 are common in these other states as well.

Illinois regulates home improvement practices through its Home Repair and Remodeling Act and its Home Repair Fraud Act. These provisions are generally similar to Wisconsin's Home Improvement Practices rule.

Iowa grants consumers a private right of action, which enables consumers to sue businesses that engage in deceptive or unfair practices, misrepresentation, or failure to disclose material facts. This law covers home improvement practices, among other areas.

Contractors who do home improvement work in Minnesota and Michigan are required to obtain a license from the state (there are some exceptions). In Minnesota, licensed contractors are required to pay into the Minnesota Contractor's Recovery Fund. This fund compensates people who have suffered losses due to a licensed contractor's fraudulent, deceptive or dishonest practices, misuse of funds, or failure to do the work the contractor was hired to do.